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Intellectual Ammunition

a publication of The Heartland Institute

Potshots

An environmentalist is someone who already has a cabin in the woods.

UNKNOWN

Middle-class voters object to schemes that redistribute wealth from them to the poor, not from the rich to them.

MICHAEL KELLY

People are more violently opposed to fur than leather because it's safer to harass women than motorcycle gangs.

ANONYMOUS

Surely more people find inner peace working with their hands than do so working with their brains. Man is a tool-using animal, and the instinct goes very deep.

JOHN DERBYSHIRE

"Congress to look skeptically at US Airways-United merger." Whoa. Did the airlines forget to cough up?

ZAY N. SMITH

I don't have a lot of sympathy for people who drive around gates [at railroad crossings]. You can't outlaw stupidity, or being inattentive.

IAN SAVAGE

The whole aim of practical politics is to keep the populace alarmed, and hence clamorous to be led to safety, by menacing it with an endless series of hobgoblins, all of them imaginary.

H.L. MENCKEN

A Blueprint for Reforming Indiana's Political Organizations

by Jim Knoop

It should come as no surprise the once-vaunted political parties in Indiana are dead. Neither party has determined the outcome of a major election since 1972. Party leaders are even incapable of recruiting people to run for precinct committeeman (there are 11,012 precincts in Indiana) or state convention delegate.

Should we care? Yes, for the American system of representative democracy is predicated on political activism and a multi-party system. The goal is good government that serves the specific needs of the body politic, while remaining accountable to it. The efficacy of government depends directly on the vitality of political institutions.

So what is to be done? How can we improve the performance and accountability of government by making political activism meaningful again? How can we reform the way we draw legislative maps, fund campaigns, select candidates, and discuss political ideas?

INCREASE POLITICAL COMPETITION

Out of the 150 members of our current legislature, 73—some 49 percent—were unopposed during their last election. That means almost half of our representatives and senators did not have to conduct a pesky campaign to defend their past service or discuss local issues.

Most of these noncompetitive races were the direct result of gerrymandered districts. Such manipulation of the electorate diminishes competitive races, is hurtful to democracy, reduces accountability, and contributes directly to mediocre government.

If legislative seats can be drawn for partisan advantage, they can be drawn to promote competition and to maintain areas of common interest like cities, towns, and counties.

Assuming Indiana maintains its current 10 House seats under the upcoming federal reapportionment, a simple proportionality of drawing districts should be adopted. Legislative mapmakers need to start by drawing the 10 congressional districts. Each congressional district could then be subdivided into five state senate districts, and each senate district into two state house districts. This could result in clusters of state and federal legislators working together to benefit their communities—an arrangement that should promote intergovernment and interparty cooperation.

CHANGE THE WAY MONEY FLOWS

Most of the motivation for reform on the federal level stems from concern over the amount of influence and access being purchased by well-fi-

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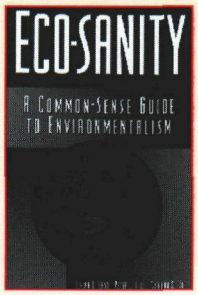

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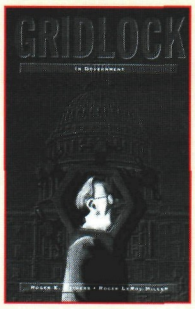

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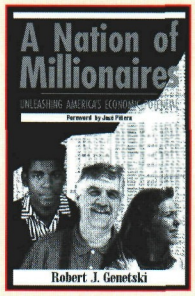

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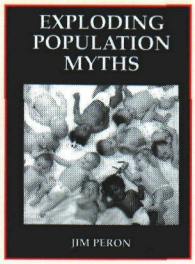

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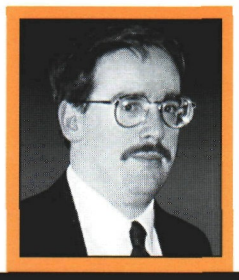

News from the Heartland

by John R. La Plante
Managing Editor

The fall elections are only a few weeks away, and disappointingly few races are expected to be competitive. According to the *Wall Street Journal*, only 40 or so Congressional seats could plausibly switch hands. The situation is little different in many states legislatures.

In our cover story, political consultant Jim Knoop reports that during the last election, nearly half of Indiana's legislature ran *unopposed*.

While that's good news for officials who wish to return to office, it's bad for the cause of good government. Innovation, low prices, and productivity in the business world all depend on competition—the threat of being replaced.

Knoop lays the blame for uncompetitive elections on the weak condition of Indiana's—and by extension, many other states'—political parties. He offers suggestions for making political parties and political activism meaningful again.

Knoop's suggestions do not necessarily represent the views of The Heartland Institute, its staff, directors, or donors, but they are worth discussing. A longer version of his essay is available on the Web at www.inpolicy.com.

NEW CONTRIBUTORS

With this issue, we welcome **Myron Ebell** to the environment department. Ebell, who focuses on global warming and international environmental issues for the Competitive Enterprise Institute, concludes that the National Assessment on Climate Change is based on "a scientific fraud."

Also with this issue, we inaugurate a different kind of column—one that focuses on providing the elected official or candidate with practical tools for conducting political campaigns. We will be bringing you tips from *Campaigns & Elections* magazine, the premier trade publication for candidates and campaign managers.

NEW FEATURE

Intellectual Ammunition has long published a Contacts section, providing contact information for hundreds of public policy organizations nationwide.

In every other issue, starting with this one, we will use the Contacts pages to identify members of Heartland's Legislative Advisory Committee, an unpaid, bipartisan panel of officials who advise The Heartland Institute. You can use this list to quickly identify legislators who are familiar with and participating in Heartland's work.

For information about joining the Legislative Advisory Committee, please call Heartland Public Affairs Director Lee Alan Lerner at 312/377-4000, email lerner@heartland.org.

ALSO IN THIS ISSUE

Scott G. Bullock, writing in the law column, exposes the coercion that underlies Arizona's latest proposal for raising money for funding campaigns: levying extra fees on certain lobbyists, and on parking ticket violators, speeders, and other civil and criminal defendants.

Bartlett D. Cleland, in our technology department, explains why he applauds recent legal action against Napster. The matter involves something more important than the mere distribution of music, he writes, reaching to the health of the economy and the sanctity of our Constitution.

Other columns tackle the estate tax; the Supreme Court's recent *Miranda* decision; worker's rights; high school scholars; the history of Medicare, and welfare enrollment.

Managing Editor John La Plante welcomes your comments at laplante@heartland.org.

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nanced special-interest groups. The Indiana Lobby Registration Commission reports lobbyists spent a record $16.9 million during 1999 to influence our legislature. That sum does not include the millions of dollars donated to political candidates throughout the state.

While special-interest groups have every right to promote their point of view, it is understandable why typical citizens feel impotent by comparison. How can their voices be heard in the halls of government over the roar of special-interest money?

As is true when they're recruiting volunteers, candidates and parties must compete with many other organizations for individuals' disposable incomes. The not-for-profit sector enjoys a competitive advantage over political organizations by nature of their tax status. The legislature should define candidate and party committees as not-for-profits for state tax purposes, and treat them the same as charities—thus providing a tax break for political giving.

Out of the 150 members of Indiana's current legislature, 73—some 49 percent—were unopposed during their last election.

Current Indiana campaign finance law allows individuals and PACs (political action committees) to contribute unlimited sums to state candidates and parties. To simplify the rules, promote public confidence, and provide the parties a renewed role in campaign finance, Indiana's laws should be changed as follows:

- Limit contributions to candidate committees to $1,000 per calendar year from individuals, PACs, corporations, and labor unions.
- Allow unlimited party committee contributions to candidate committees under their geographic jurisdiction.
- Allow unlimited contributions from any source to party committees.

The key to campaign finance law is full and timely disclosure of who is giving how much to which candidate, allowing voters ultimately to decide what are acceptable thresholds. A sophisticated statewide database of all political giving, including county and district party committees, must be maintained by the state on the Secretary of State's Web site.

REPEAL THE DIRECT PRIMARY ELECTION

Selecting party candidates via primary elections should be abolished. If we are serious about empowering parties and making party activism attractive, then we should entrust the activists with selecting their parties' candidates, as opposed to trying to persuade an electorate to do something they really don't care about. (In Indiana, voter turnout has never exceeded 28 percent in a primary election.)

A new party office of community delegate should be created. Combining the existing responsibilities of precinct committeeman and state party delegate, community delegates would be elected for all political parties with automatic ballot access under existing state statute.

To emphasize the importance of this new office in the community, candidates for community delegate would appear first on the ballot. Required to live in the precinct they aspire to represent, one community delegate, per party, would be elected in each of the state's 5,506 precincts. In addition, candidates for community delegate would not be allowed to hold or run for any other public or party office.

Community delegates would serve as the eyes and ears of the party, tracking public opinion, identifying issues, and reporting needs to elected officials. They would also have a vote in selecting party leaders and all candidates for public office.

Given these delegates would in turn nominate all candidates for public office, incumbents and challengers alike would be motivated to encourage their supporters to seek these posts. The entire political dynamic would change, from a television-driven mass media primary to a highly local, grassroots organizational campaign. The candidates' record of party/community involvement would become more important, and "deep pockets" or special-interest support would become far less important.

Once the community delegates have been elected, a series of caucuses would organize from the bottom up. Prior to the end of the year when the community delegates were elected, the parties would reorganize as they do now, moving from county, to congressional district, to state party committees.

PROMOTE IDEAS, GOALS, OBJECTIVES

It is vital to link the party's goals and objectives with its candidates, and the community delegate caucus system would do so. The party's goals and objectives should be ratified as the first order of business when delegates caucus at the county level to nominate candidates. Candidates would thus be clearly on record and held accountable for their positions.

The process of determining goals and objectives should continue at every party convention up the legislative, congressional, and statewide ladder. If all 92 counties were, say, to include eliminating property taxes as the source for local government financing in their goals and objectives, it is likely the legislature and governor would respond positively, notwithstanding any amount of money or influence exerted by the self-interested elite.

Civic-minded people will get involved for the betterment of their community when they see a meaningful path to achieving shared goals.

All county parties should include their goals and objectives on their Web sites and link them to the sites of the other 91 counties. Here we have another new opportunity to share innovative solutions to common problems across Indiana. Easy access to county goals and objectives would also serve as an idea incubator for state and federal officials.

Civic-minded people will get involved for the betterment of their community when they see a meaningful path to achieving shared goals. This system of linking local goals and objectives with the political capital of community delegates provides thrilling new possibilities for improving Indiana community by community, while strengthening moribund political institutions statewide.

Jim Knoop is a political consultant based in Elmwood, Indiana. A longer version of this essay was published in the Spring 2000 issue of Indiana Policy Review, *a publication of the Indiana Policy Review Foundation.*

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Crime

Morgan Reynolds

Morgan Reynolds is director of the Criminal Justice Center at the National Center for Policy Analysis.

Miranda and Rule by Five Lawyers

The cause of public safety took a hit in late June when the Supreme Court refused to change its worst criminal ruling ever, the so-called *Miranda* warning.

Worse, the Court displayed its contempt for all opinions but its own. Democracy? Smocracy. Congress? Pish. State and local government? Posh. State courts? So much poop beneath our feet. And coherent reasoning? We don't need no stinkin' reasoning to rule the sheeple.

My favorite Justice, Antonin Scalia, crafted a devastating dissent, saying the Court had elevated *Miranda* "from a milestone of judicial overreaching" into a monument "of judicial arrogance." Unfortunately, only Clarence Thomas joined Scalia to protest the 7-2 blow against the principle of constitutional government by the people.

During the 1960s, you may recall, an ambitious left-wing on Earl Warren's Court rewrote the Constitution of the United States to help all those poor, abused criminal suspects. The centerpiece of this counterfeit constitution was *Miranda v. Arizona* (1966), which had three components:

- Police must follow a series of steps to assure that a self-incriminating statement or confession is voluntary (the so-called "warnings").
- Once a suspect "wants to be alone," his wish to remain silent must be respected forever, and police and prosecutors may never question him without counsel present.
- Police must adhere to these rules perfectly or the court will exclude the defendant's statement.

Few object to a police warning, including me. In fact, the Phoenix police gave a warning to Ernesto Miranda back in the '60s, and the kidnapper-rapist voluntarily signed a consent waiver. Those procedures help to establish the voluntariness of a statement. In the supposed dark ages before *Miranda*, "totality-of-the-circumstances" was the test for the voluntariness of a suspect's admissions. The Constitution abhors compelled statements ("No person shall be compelled in any criminal case to be a witness against himself"), not admissions of guilt made by stupid criminals into a police tape recorder.

"MAY NOT BE OVERRULED"

In the recent case, a criminal named Charles Dickerson robbed seven banks in Maryland and Virginia. He demanded that his voluntary confession, vital to his conviction, be suppressed because the FBI did not properly Mirandize him.

So what? Congress had passed an obscure statute in 1968 known as Section 3501 to exempt federal law enforcement from *Miranda*. The Appellate Court ruled Dickerson's confession was entirely voluntary, *Miranda* was not constitutionally required (only "prophylactic," as courts ruled many times), and the 1968 statute was valid.

The Supremes overruled, proclaiming, "*Miranda*, being a constitutional decision of this court, may not be in effect overruled by an Act of Congress." Note the mild, unassuming tone from the top.

The decision was truly incoherent, highlighted by the silent fact that the Court never declared Section 3501 unconstitutional. Such a statement "would be absurd" on its face, as Justice Scalia pointed out, because both Section 3501 and the Constitution "exclude coerced statements of the accused." That's perfect harmony, so the seven-member majority couldn't declare Section 3501 contrary to the Constitution outright, in plain language, without acting like ideological zealots, which it did.

The Court got one thing right: Section 3501 and *Miranda* are completely at odds with each other. But since Section 3501 is in perfect harmony with the Constitution as well as the traditional "totality-of-the-circumstances" test, in all logic and law the Court should have reversed itself on *Miranda*, embarrassment over fallibility be damned.

> *Do the sleepy representatives of the people know and care about this constitutional crisis?*

Today the Court (1) refuses to enforce an Act of Congress if it violates the Constitution of the United States, a principle accepted since *Marbury v. Madison* in 1803, and (2) refuses to enforce any Congressional Act which is contrary to legislation crafted by five unelected lawyers. Scalia terms this an "immense and frightening antidemocratic power, and it does not exist."

As long as the people remain supine, it exists alright.

Utah law professor Paul Cassell, who argued the losing side in *Dickerson*, told me the "Court, in its arrogance, did not deign to tell Congress what alternative it might find acceptable." Even Earl Warren's *Miranda* opinion "encouraged" Congress and the states to look for alternatives, implying the Court sought partners.

Under the new rationale, the Congress spelled out in Article I of the Constitution is superfluous. A five-Caesar government needs little more than an executive to carry out its "laws." Do the sleepy representatives of the people know and care about this constitutional crisis?

FOR MORE INFORMATION...

Handcuffing the Cops: Miranda's Harmful Effects on Law Enforcement. Miranda hinders law enforcement, with minor benefits to civil rights. (National Center for Policy Analysis, August 1998, 27pp.)

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Education

George Clowes

George Clowes is managing editor of *School Reform News*, a monthly newspaper published by The Heartland Institute.

Setting High Expectations

With an almost daily diet of "dumbing down" stories coming from the nation's schools, it would be easy to become discouraged about efforts to reform public education in the United States. But there *is* good news of hope and encouragement for improving the education of America's children.

NO EXCUSES FOR LOW ACHIEVEMENT

How to close the gap in academic achievement between minority and white students? After reading Samuel Casey Carter's book, *No Excuses: Lessons from 21 High-Performing High-Poverty Schools*, it's difficult to escape the conclusion that only insufficient will keeps many children and schools from performing well.

The low-income minority children in Carter's 21 schools perform well not because their schools have been given more resources and support, but because they have principals with the will to see the children in their schools succeed.

> *Children perform well not because their schools have been given more resources and support, but because they have principals with the will to see the children in their schools succeed.*

Principal Lorraine Monroe established the Frederick Douglass Academy in 1991 on the site of a failed middle school in central Harlem to prove that low-income, inner-city minority children could meet the highest standards of achievement. Today, graduates from the Academy go on to Yale, Princeton, and the best of the traditionally black colleges. In 1998, the middle school's test scores ranked 12th out of 235 in New York City, 32 percentage points higher than the city average in reading and 26 points higher in math.

Gregory Hodge, principal of the Academy since 1996, frankly admitted he likes to compete with the best in his neighborhood: Stuyvesant. With its brand-new building, science labs, elevators, escalators, and multiple gyms, Stuyvesant "produces the best minds in the United States," said Hodge.

"I don't compete against the regular high school," explained Hodge. "I compete against Stuyvesant. My students compete against them to say that we can do it, even though we don't have the same funding. Funding is always going to be a question. I'm in an old building. I don't have science labs. I have 34 kids in a class, 30 kids in middle school. But I spend the money as wisely as I can, and even though I don't have as much money, I still get the results."

Frederick Douglass Academy is just one of 21 high-performing, high-poverty schools Carter found. The success of the 21 schools is the result of hard work, common-sense teaching philosophies, and successful leadership strategies that can be replicated.

READ THE BEST OF HIGH SCHOOL WRITING

Schools with low standards, teachers with low expectations, and students who dislike to read, cannot write, and are ignorant of history. We're all too familiar with the problem, but what can one person do about it?

Reflecting on that question 13 years ago, high school history teacher Will Fitzhugh realized he could show students the high standard they should be aiming for by publishing the best essays of high school students in a quarterly academic journal. Not only would this recognize and encourage students who took their work seriously enough to produce soundly researched and well-written essays worthy of publication, but it also would challenge other students to match standards set by their peers.

Fitzhugh began publishing *The Concord Review* from his Sudbury, Massachusetts home in 1987. Today, he works full-time on the *Review*, gathering essays from high school students around the country—and now around the world—and selecting about 10 of those essays for publication in the *Review* each quarter. Since 1987, he has published over 450 exemplary essays by secondary students from 38 states and 25 countries on a wide range of topics. Each essay is about 5,000 words, with endnotes and annotated bibliography.

"The GI Bill," by Stephanie Swanson of Blake School, Minneapolis, Minnesota, is the first essay in the Winter 1999 issue of *The Concord Review*.

Hana S. Field was awarded $5,000 for this year's Gilder Lehrman Essay Prize for her 1999 *Review* essay on the efforts of American libraries to keep L. Frank Baum's classic children's story, *The Wizard of Oz*, off their shelves. For example, until the prohibition was lifted in 1972, the Detroit Public Library had banned the book for 30 years. Field wrote her essay when she was a student at Chicago's Francis W. Parker School.

Too often, we expect too little from students—and get it. Carter and Fitzhugh, however, demonstrate that strong leadership and high expectations can result in excellence.

FOR MORE INFORMATION...

Spending More While Learning Less. Increases in per-pupil spending have not improved student achievement. (Fordham Foundation, July 1998, 26pp.)

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Environment

Myron Ebell

Myron Ebell is director of global warming and international environmental policy at the Competitive Enterprise Institute.

The National Assessment on Climate Change

The misuse of science for political purposes has reached new depths with the National Assessment on Climate Change.

The President's science advisor ordered this expensive study of the possible regional effects of global warming in early 1998. He made it clear to the interagency team (known as the U.S. Global Change Research Program or USGCRP) producing the report that the purpose was political and that it was needed in time for President Clinton's January 2000 State of the Union address. To meet the deadline, the USGCRP cut lots of administrative corners, including violations of the Federal Advisory Committees Act, a sunshine law intended to inhibit such shenanigans.

The rush intensified last November when technical reviewers were given only two weeks to comment on a draft hundreds of pages long. That was the last straw for many participating experts, including government scientists under tremendous pressure to toe the administration's line on global warming.

Leaving aside the politically motivated conclusions, what's wrong with trying to predict the regional effects of possible global warming? It's simply not possible scientifically.

Reviewers' comments were scathing. For example, the Environmental Protection Agency, which has seldom seen a risk it didn't exaggerate, noted the section on health effects had an "extreme/alarmist tone [which does] not appear to fairly reflect the scientific literature, the historical record, or the output of extant models."

Dr. Kevin Trenberth, a prominent global warming alarmist at the National Center for Atmospheric Research, commented, "The article I referred to on the use and abuse of climate models describes appropriate use of models. Here is a classic example of misuse and abuse of them." Dr. James Hansen of NASA, who launched the global warming scare in 1988, was similarly critical of the draft report.

The scientists' revolt forced the USGCRP to miss its January 2000 deadline. That did not end the National Assessment's political usefulness, however. The new goal is to help Vice President Al Gore win the election.

Round one of this new effort began in June, when a revised draft report was quasi-released for public comment. Dozens of newspaper and television news stories reported the local effects of global warming will include droughts, floods, severe storms, dengue fever, malaria, and rising sea levels.

Round two is scheduled for early October, when the final version is to be released. The White House is clearly determined to spin another round of scary stories out of the taxpayers' multi-million-dollar investment before the election. House Science Committee Chairman James Sensenbrenner has requested the final product be delayed until the legal irregularities and scientific shortcomings are fixed. So far, the White House has told him to get lost.

THE PROBLEM WITH MODELS

Leaving aside the politically motivated conclusions, what's wrong with trying to predict the regional effects of possible global warming? It's simply not possible scientifically.

The USGCRP used two global computer models, a Canadian model and one from the United Kingdom's Hadley Centre. Their results conflict so often that in terms of guiding policy the report is worthless. For example, for large areas of the country one model predicts much less rainfall than has been experienced in the past; the other predicts much more rainfall.

This is not a correctable problem, because GCMs simply cannot accurately predict regional climatic effects. The United Nations Intergovernmental Panel on Climate Change says so: "Despite recent improvements and developments, regionalization research is still a maturing process and the related uncertainties are poorly known. . . . Therefore, a coherent picture of regional climate change via available regionalization techniques cannot yet be drawn."

EPA agrees: "These complicated models are able to simulate many features of the climate, but they are still not accurate enough to provide reliable forecasts of how the climate may change."

Even the Hadley Centre agrees: "Global climate models can provide scenarios of changes in climate down to scales of 1000km or so at best. . . . But in areas where coasts and mountains have a significant effect on weather (and this will be true for most parts of the world), scenarios based on global models will fail to capture the regional detail needed for vulnerability assessments at a national level."

There you have it. Regardless of changes made to the draft, when the final National Assessment (which can be found on the Web at http://www.gcrio.org/NationalAssessment/overview.html) is rolled out for the Presidential campaign, it will still be junk science at its worst. As science journalist David Wojick has said, it's not the National Assessment; it's the National SCARE.

FOR MORE INFORMATION...

Climate Policy from Rio to Kyoto.
S. Fred Singer summarizes the problems of climate models. (Hoover Institution, June 2000, 5pp.)

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Health Care

Twila Brase, RN, PHN

Public health nurse Twila Brase is president of Citizens' Council on Health Care.

Medicare's Anniversary: No Time to Celebrate

Thirty-five years ago, Congress took away the freedom of senior citizens by making them dependent on the federal government for access to health care. Singing the praises of that decision, hundreds gathered in Washington, DC on July 12, 2000 to celebrate the 35th birthday of the Medicare program. There were speeches, the obligatory Medicare recipient, and carts of cake.

The history of Medicare's enactment bears recounting. In late 1960, Senator Clinton Anderson of New Mexico and Representative Cecil King of California introduced the King-Anderson bill for the establishment of Medicare. The country soon became embroiled in a raging public debate. As occurred during the debate over the 1993 Clinton Health Plan, it was claimed there was a major health care crisis in America.

> *Dr. Edward Annis predicted Medicare would increase medical costs and introduce government interference between patients and doctors. Both predictions have come true.*

But Medicare was nearly defeated by one event in May 1962. President John F. Kennedy stood before television cameras addressing a standing-room-only crowd at Madison Square Garden. The very next day, Edward Annis, M.D. of the American Medical Association addressed empty chairs from the exact spot where President Kennedy stood. Annis' presentation, announced the previous day by Kennedy, was covered by only one television network—from which the AMA had purchased air time. The unanticipated response was 42,000 letters to the AMA. Two months later, the full Senate voted 52-48 against Medicare.

But the bill was only dormant. After the death of JFK, President Lyndon Johnson resurrected the bill in the name of the "Martyred President." He threatened committee members with loss of appropriations to favored projects, and with help from Americans for Democratic Action, Johnson got the bill passed in July of 1965.

MEDICINE SOCIALIZED

Dr. Annis, writing in *Code Blue*, records comments made by Dr. Leonard Larson, then-President of the AMA: "[T]he administration's medical care proposal, if enacted, would certainly represent the first major, irreversible step toward the complete socialization of medical care. . . . The King-Anderson program does not provide insurance or prepayment of any type, but compels one segment of our population to underwrite a socialized program of health care for another, regardless of need."

Dr. Annis goes on to note that early Medicare provided taxpayer-funded health care for 16 million senior citizens who had never paid into the system, 7.7 million of whom had their own private health insurance, and most of whom already paid privately for care.

Dr. Annis predicted Medicare would increase medical costs and introduce government interference between patients and doctors. Both predictions have come true.

Payment formulas established by Congress limit reimbursements to physicians, hospitals, and home health agencies—creating a disincentive for providing care. Restrictive payment systems include RVRBS (Relative Value Resource Based System), a physician payment system based on regional pricing; DRGs (Diagnostic-Related Groups), hospital payments based on groups of diagnoses; and most recently, the Prospective Payment System (PPS), which provides fixed prepayments for anticipated health care services, regardless of actual costs. PPS covers in-hospital care, hospital outpatient services, skilled nursing home care, and home health services.

In essence, prospective payment systems force every hospital, skilled nursing facility, and home health agency to act like an HMO. HMOs and other managed care organizations are paid fixed premiums by enrollees and often pay physicians a fixed amount per enrollee per month in advance of services provided, regardless of the cost of care received. This is called capitation. Since the PPS uses capitation as well, hospitals, home health agencies, and skilled nursing facilities may soon join HMOs in the business of denying care. Such formulas actually move Medicare recipients into managed care even if they're not in an HMO—or refuse to join one.

Unfortunately, the hands of senior citizens are tied. Even if Medicare recipients are willing to pay more, Medicare limits what they are allowed to pay, and Congress forbids payments for services denied by Medicare.

Government officials publicly cheer the report that Medicare will be solvent until 2025 . . . but they hide the fact that the Medicare Trustees Report predicts it could be insolvent as early as 2012. For Medicare to continue as-is requires either sharp increases in taxes or severe rationing of care.

Congress has the power to solve the Medicare crisis by enacting policies that reduce the need for Medicare, including the facilitation of lifelong insurance policies, a repeal of the prohibition on payments by seniors, and encouraging the purchase of Medical Savings Accounts. Only then can we all celebrate.

FOR MORE INFORMATION...

Congress Should End the Confusion over Medicare Private Contracting. Congress should clarify the right of Medicare patients to spend their money on services of their choice. (The Heritage Foundation, February 2000, 2pp.)

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Law

Coercion at the Heart of Campaign Finance Schemes

Scott G. Bullock

Scott G. Bullock is a senior attorney at the Institute for Justice.

Campaign finance reform promises to be a hot issue in the upcoming political frenzy. The most sweeping and controversial reform effort is public funding of campaigns, often depicted by its supporters as the crown jewel of campaign reform. But supporters of public funding have to be careful how they sell the idea.

Knowing taxpayers are unlikely to willingly subsidize political campaigns, advocates typically depict public funding schemes as voluntary. A new public funding law in Arizona, however, demonstrates that coercion lies just below the surface of supposedly voluntary reform efforts.

Because so few people want to subsidize political activity through voluntary mechanisms such as a tax credit, public subsidies for campaigns are woefully insufficient. A three-dollar check-off on federal income tax forms, for example, is used to publicly fund Presidential candidates. But the number of taxpayers who check this box has been falling for years; only 12.5 percent of the electorate in 1997 marked "Yes." The fund is expected to run dry at the end of this Presidential campaign season.

At the federal level, taxpayers have had a choice. But in Arizona, the Clean Elections Act has turned to coercion. The law, enacted in 1998, was passed by a threadbare majority of Arizona voters (51 percent). It is considered by campaign finance reform activists as perhaps the premiere state public funding law and serves as a harbinger of future reform efforts.

> *No person can be forced to support someone else's political beliefs or activities.*

Applicable to all elected statewide offices, the initiative creates an intricate new system of public campaign funding, restrictions on campaign contributions and expenditures, extensive new reporting requirements, and a Clean Elections Commission to administer the scheme. At the heart of the initiative is a public funding plan that ostensibly is "voluntary" for both candidates and contributors.

So during the campaign to enact the law, its supporters emphasized the voluntary funding aspect. Each taxpayer could designate a five dollar checkoff on state income tax forms, similar to the Presidential fund at the federal level, or receive a dollar-for-dollar tax credit, for up to 20 percent of tax liability or $500, whichever is greater. Funds would go to the Clean Elections Fund. In other words, some taxpayers, if they chose, could designate their entire state income tax liability to subsidize political campaigns.

But the initiative's sponsors, given the experience of faltering support for the Presidential campaign fund, buried in the details of the plan two compulsory funding sources for the Clean Elections Fund: a new, 10 percent surcharge on all civil and criminal fines, and a $100 annual fee on lobbyists.

In Arizona, anyone who receives even a simple parking or speeding ticket will now subsidize political campaigns. Moreover, anyone who lobbies the government on behalf of a business, whether it is a software company or a group of farmers, must give $100 a year to the Clean Elections Fund.

> *Knowing that taxpayers are unlikely to willingly subsidize political campaigns, advocates typically depict public funding schemes as voluntary.*

Not *all* lobbyists must pay the fee, however. Individuals who represent nonprofit groups are exempt from the fee, unless the nonprofit group represents commercial interests. So environmental groups, labor unions, and senior citizen organizations—the very groups who were some of the initiative's strongest backers—do not pay the lobbying fee.

The mandatory surcharges and fees at the heart of Arizona's initiative blatantly violate the First Amendment. A fundamental principle of the First Amendment is that the government may not compel anyone to support the political speech or beliefs of someone else. Thomas Jefferson declared, "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves is sinful and tyrannical."

The U.S. Supreme Court has consistently enforced Jefferson's maxim by striking down compelled political speech. For instance, the Court has invalidated the use of mandatory public employee union dues for political purposes, holding the First Amendment requires "such expenditures be financed from charges, dues or assessments paid by employees who do not object to advancing those ideas and who are not coerced into doing so against their will."

Under a proper reading of the First Amendment, courts in Arizona and throughout the nation will eventually stymie efforts to coercively finance elections by recognizing a core First Amendment right: No person can be forced to support someone else's political beliefs or activities.

For more information...

Public Financing of Pennsylvania Gubernatorial Campaigns. Public funding of campaigns is only one flaw in campaign finance reform. (Commonwealth Foundation, July 1999, 2pp.)

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The Four-Legged Stool

Ron Faucheux

Ron Faucheux is editor-in-chief of *Campaigns & Elections* magazine.

Television is king of political communications media. But too many campaigns—particularly big ones—are overly dependent on it. As a consequence, they shortchange phone and mail programs, as well as other targeted forms of grassroots organization-building, which are all more vital than ever because of declining election-day turnout.

USE A MEDIA MIX

A campaign's ability to disseminate messages should, ideally, rest upon a four-legged stool of: electronic media (broadcast TV, cable TV, radio, Internet), direct mail, print media (newspapers, magazines, outdoor), and telephones. Budget constraints may limit options, but campaigns need to avoid the blind spots that result from insufficient message coverage, targeting, and fortification.

Media *mix* is the key to victory—not just because the tools are there to be used, but because each of the tools has its own strategic strengths and weaknesses. Just throwing money at TV stations may not always be the right way to move voters, whether cash is plentiful or scarce.

Radio, for example, is an inexpensive way to stretch out tight 30-second TV spot scripts into fuller 60-second ads. It can provide a good get-out-the-vote (GOTV) stimulus for targeted election-day turnout.

Newspaper ads can also reinforce TV spots and earned media thrusts with more detailed documentation and explanation. This strengthens the make-or-break credibility of campaign claims and counterclaims. In addition, newspaper provides an excellent format to list numerous endorsements, promote town meetings, make visual comparisons of candidate credentials, and reach voters on election morning when they're sorting through sample ballots.

Outdoor advertising and print items get short shrift from most media consultants. "Don't waste your money on junk that doesn't convey a strategic message," they say. And when they're talking about blowing a campaign's budget on nail files and pot holders, they're absolutely right.

But when yard signs and bumper stickers are used to demonstrate widespread public support—which may, at times, be a strategic necessity—it's an error not to use them. Among many constituencies, candidates aren't considered "in the race" by a lot of voters and political wags until they see signs going up. In addition, large billboards may also have a strategic purpose, especially if they're used to convey simple, straightforward messages that inexpensively sustain momentum during slow periods between pricier media buys.

Surprisingly to some, **direct mail**—not TV time—consumes more campaign dollars than anything else. Mail is generally a higher spending priority in local and district races than it is in flashier national and statewide contests. Its strength, of course, is its ability to target individuals. With computerized voter files and database management, direct mail is more effective than ever. When it takes full advantage of targeting opportunities and is used with adequate repetition, it is a powerful weapon that should not be a planning afterthought.

DON'T FORGET TO CALL

The **telephone**, more than any medium, is underused in politics. It is an instant, interactive mode of communication that combines the speed of the Internet, the intimacy of personal contact, and the targeting capacity of direct mail. It is most effective when used in tandem with mail.

Unfortunately, many campaigns budget phones last. It's often an 11th-hour contingency that fails to get the attention it deserves. More than a few candidates believe phoning is mere "make work" for volunteers. But that misconception ignores the possibilities for applying this simple tool in a very sophisticated fashion.

Many big-spending candidates would do well to divert a few of the dollars they're now indiscriminately dumping on TV into bottom-up grassroots efforts.

The telephone can be used to identify supporters among mass voters—which is crucial to GOTV efforts. It can be used to persuade undecided voters; to recruit and mobilize campaign volunteers; to remind citizens about their election-day obligation; and to issue invitations to upcoming events.

Many big-spending candidates—not the least of which being personally wealthy newcomers—would do well to divert a few of the dollars they're now indiscriminately dumping on TV into bottom-up grassroots efforts that would give their campaigns an infusion of popular energy so conspicuously absent in today's politics.

Truly great campaigns—be they for President of the United States or for the local city council—are those that bring new people into the process. They enlarge the base of participation and spawn new leaders. Those campaigns are never waged exclusively on tape or film. They're won on the streets and in neighborhoods, on doorsteps and in the field, where real democracy is practiced.

FOR MORE INFORMATION...

PHONE *Campaigns & Elections* magazine is published 10 times a year by Congressional Quarterly Inc. A year's subscription is $49.95. For more information, call **800-771-8252**.

WWW Or visit the magazine's Web site at **www.campaignline.com**.

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Privatization

Adrian Moore

Adrian Moore is director of privatization and government reform for the Reason Public Policy Institute.

The Slow Death of Lowest Bid

We are witnessing the beginning of the end of contracting out strictly by lowest bidder.

A recent survey on privatization by the Council of State Governments dramatically shows that while cost remains the most important reason for privatization, its "market share" is falling. In many states, though, procurement laws still set rigid low-bid requirements that stifle opportunities to privatize, even when quality and competence are as important as cost in making contractor selections.

Asked what they expect to be the most important reasons for privatization in the next five years, state agencies responded (they could pick more than one):

- cost savings: 38 percent
- increased support of political leadership: 28 percent
- lack of state personnel and expertise: 28 percent
- flexibility and less red tape: 20 percent
- increased innovation: 19 percent
- speedy implementation: 16 percent
- high quality service: 13 percent

Access to personnel or skills not available in-house, flexibility, and tapping private-sector innovation have become increasingly important reasons for privatization, and those qualities are not necessarily provided by the lowest bidder.

As the reasons for privatization change, so too are the processes by which governments select contractors. Agencies are starting to realize what every shopper knows: Sometimes if you pay more, you get more. That is, the best value is not always the cheapest product.

Government procurement and service contracting best practices are steadily moving towards "best-value" techniques: Rather than selecting a private partner based on low cost alone, governments choose the best combination of cost and quality. The Federal Acquisition Regulations and the American Bar Association's "New Model Procurement Code" now embrace best-value procurement standards.

Best-value procurements are more complex than low-bid selections. Best-value requires an agency to weigh the capability, performance, and life-cycle costs of a proposal, not just the contract cost. The results, however, are more value for each taxpayer dollar.

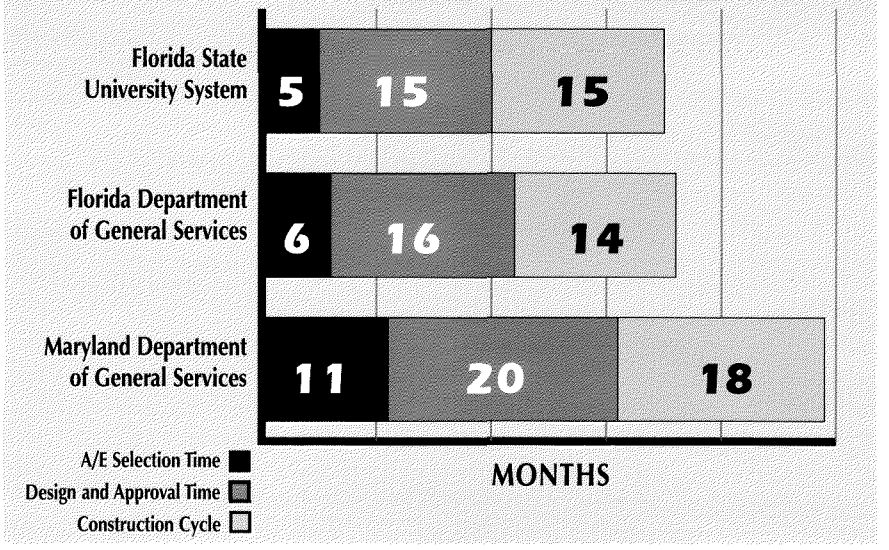
For example, a 1985 study by the American Institute of Architects examined the construction project selection process for Maryland and Florida. Florida law allowed (and still does) agencies to select architects/engineers (A/E) on the basis of technical competence or other quality-based criteria. In Maryland the procurement laws meant price had to be the dominant selection factor.

The study found Maryland took 33 percent longer to complete a project. The total project delivery cycle was 49 months in Maryland and 36 and 35 months, respectively, at Florida Department of General Services and Florida State University System.

Maryland, recognizing that longer schedules mean higher total costs, has since reformed its procurement laws to allow more quality-based selections. Though there has not been a follow-up study, there is general satisfaction that project schedules and costs are within reason.

While a number of states have liberalized their procurement laws to allow best-value selections, many others have not. Requiring agencies to always buy the cheapest assumes all other things are equal—which they rarely are. The more complex the procurement or outsourcing, lowest absolute cost will give way in importance to such factors such as quality, flexibility, speed, innovation, and risk management. If low-bid selections are required, many of the most valuable privatizations won't happen.

Comparative Construction Cycles



FOR MORE INFORMATION...

How Big Should the Capital Stock Be? How much infrastructure is enough? (Jerome Levy Institute, September 1998, 5pp.)

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Regulation

Murray Weidenbaum

Murray Weidenbaum is chairman of the Center for the Study of American Business.

Government Regulated Job Insecurity

Widespread reports of rising insecurity among American workers constitute a great anomaly in this period of unusually low unemployment. Sadly, this apparent paradox is a cogent example of the unintended consequences of government regulation.

Recent surveys show that, as a portion of the workforce, about three times as many people fear losing their jobs in today's prosperous economy than in 1981. Back then, the unemployment rate was painfully high—above 10 percent—while in recent months the rate has hovered around an unusually low 4 percent.

Meanwhile, the average job tenure (length of time employees have been holding their jobs) has not significantly changed. In fact, average job tenure is slightly up—from a low of 3.4 years in 1987 to 3.6 years in 1998 (the most recent year for which data are available).

WATCH FOR WARN

So what accounts for the rising feeling of job insecurity on the part of so many American workers? Nobody knows for sure, but there is good reason to believe that, in good measure, this sad situation is an artifact of well-intentioned labor legislation.

In 1988, Congress passed the Worker Adjustment and Retraining Notification (WARN) Act. Among its many other bureaucratic provisions, the WARN Act generally requires employers to provide 60 days' advance notice of layoffs involving 500 or more workers. (As in every regulatory statute, there are numerous exceptions and special cases.)

The penalties for non-compliance are severe. An employer who is in violation of this paperwork requirement is liable to pay each "aggrieved employee" back pay and benefits for the full period of the violation, up to 60 days. In addition, an employer who fails to provide the required layoff notice to the local government is subject to a penalty of up to $500 for each day of violation.

As a result, it is not surprising that companies anticipating the layoff of 500 or more workers make sure they provide sufficient notice. In some cases, the number of people actually laid off has been substantially lower than the announced total (AT&T was perhaps the most dramatic example). But, in view of the potential penalties, it is clear why employers depart from the normal tendency to underestimate bad news.

As in so much other legislation passed by Congress, one sector receives special treatment: "regular Federal, state, and local government" agencies are generally exempt. That's neat. If a private business lays off 500 workers or more it must give notice to the affected workers or their representatives (such as a labor union) as well as to the state government's "dislocated worker unit," and to the local government. But if any of those governments themselves lay off 500 or more workers, they can keep quiet about it. It's only when the private sector eliminates jobs that Congress wants the public to know!

Our interest in this seemingly arcane bit of federal paper shuffling arises because there is no comparable legislation requiring employers to issue notifications of future *hiring* plans. From time to time, the typical worker encounters dramatic announcements of job layoffs on the evening TV news and in the daily paper. Reports of large layoffs typically are the subject of continued media attention, usually on the front page of the local newspaper, with follow-up dramatic interviews about the hardships that will be created.

What accounts for the rising feeling of job insecurity on the part of so many American workers? In good measure, this sad situation is an artifact of well-intentioned labor legislation.

Rarely seen, though, are comparable headlines proclaiming the expansion of local employment—and the overall creation of 16 million new jobs in the United States since 1990 (and a drop in the unemployment rate from 5.6 percent to 4.1 percent during the same time period). The monthly reports by the Bureau of Labor Statistics—typically informing us that employment rose and the unemployment rate declined—are, if covered at all, relegated to the depths of the paper's financial section.

This is not primarily a criticism of the journalism profession, although media coverage of economics could benefit from some further improvement. Nevertheless, it is sad to note that this period of unusually good news on the employment and unemployment fronts gets interpreted by so many American workers as a time to be worried about the future.

Of course, Congress never intended to pass a statute designed to increase worker insecurity. But the Law of Unintended Consequences is thriving in the federal regulatory system.

FOR MORE INFORMATION...

Wages, Water and Stagnation.
Regulations decrease worker productivity—and wages as well.
(Regulation, Fall 1997, 3pp.)

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Taxes

Bill Ahern

Bill Ahern is communications director for the Tax Foundation.

Estimates May Exaggerate Effect of Estate Tax Repeal

The House and Senate have voted to phase out the federal estate and gift tax. Several factors explain the popularity of that decision.

The estate tax prevents small businesses and farmers from passing their businesses on to the next generation. It penalizes saving and capital formation. It greatly discourages the creation of new wealth by America's most innovative, productive entrepreneurs. Finally, the economy each year is generating vast amounts of new wealth and large numbers of newly rich people, solving the concentration-of-wealth problem far more efficiently than the estate tax ever could.

THE MISLEADING ESTIMATES OF ESTATE TAX REVENUE

With all this against it, the estate tax has one last remaining ally, and that is the belief, supported by official estimates, that its repeal would cost the U.S. Treasury substantial revenue. In fact, eliminating the estate tax would not cost the Treasury nearly as much as official estimates show. Here's why:

> *The estate tax is a levy without a mission. Its ill effects are legion, its social policy motivation is obsolete, and even its revenue is an illusion. It should be repealed.*

The gift tax robs the income tax.

Under current law a taxpayer may distribute up to $10,000 tax-free each year to any person he or she chooses. Typically, the donor's personal income tax rate is much higher than the rate paid by the children or grandchildren who are the recipients. Thus, the income subsequently earned on these gifts is subject to a much lower tax rate.

The estate tax erodes the income tax base.

The estate tax may dramatically increase bequests to charities as taxpayers try to avoid paying up to 55 percent of their accumulated savings to the federal government. These assets end up producing capital income for tax-exempt charities instead of remaining in the estate where taxpaying recipients would have earned the money.

Of course, charitable organizations serve valuable social purposes, and not all such bequests are motivated by the estate tax. Nevertheless, the income tax consequences of tax-driven bequests are significant and should not be ignored.

Consider a $1 million charitable gift made to reduce estate tax liability. If the charity invests the gift and earns 8 percent annually, then it will earn $80,000 a year, tax free. If the donor, in the absence of the estate tax, had retained the $1 million, gained the same rate of return and paid personal taxes at the 36 percent rate, the Treasury would gain $28,800 in taxes—and that just for one year. This is revenue foregone to the Treasury because the estate tax motivated the donor to make a gift of the asset.

The estate tax is a disincentive to entrepreneurial activity.

Some years ago the Tax Foundation studied the estate tax's effect on entrepreneurial activity, and we found the estate tax's 55 percent rate had roughly the same effect on an entrepreneur's incentive to earn as doubling the top effective marginal income tax rate. Thus, an entrepreneur facing a 31 percent statutory income tax rate behaves as if he is facing an effective 62 percent income tax rate. As that rate rises and additional work yields less after-tax return, entrepreneurs become more likely to retire prematurely. Then they pay no income or payroll taxes on wages and create no new wealth.

Estate planning is phenomenally expensive to taxpayers and the treasury.

Official revenue estimates take no account of the enormous amounts of money (deductible from the income tax) taxpayers spend on estate planning. Since individuals worried about estate planning are likely to be in the upper-income tax brackets, the value of their estate tax planning deductions is great. Absent the estate tax, these individuals would likely shift the amounts spent on estate planning to non-deductible expenses, or they would save them. Either way, current or future income tax receipts would be higher.

Estate tax compliance costs for taxpayers and the IRS diminish its take for the Treasury.

Finally, if the estimators produced a truly comprehensive estimate for estate tax repeal, they also would account for the savings to the IRS, which spends millions of dollars each year attempting to collect estate tax revenue. The resources devoted to estate tax compliance would likely be redirected into other areas of tax collection . . . areas the estimators have historically scored as increasing collections significantly.

The estate tax is a levy without a mission. Its ill effects are legion, its social policy motivation is obsolete, and even its revenue is an illusion. It should be repealed.

FOR MORE INFORMATION...

The Moral Case Against the Death Tax. The estate tax violates moral principles of American governance. (Cato Institute, October 1999, 19pp.)

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The Death of Invention and Prosperity

Bartlett D. Cleland

Bartlett Cleland is director of the Center for Technology Freedom at the Institute for Policy Innovation.

News flash: Napster, the Web site that created an electronic marketplace for stolen music, may be illegal. Stunning insight.

Who should be concerned about Napster?

- anyone who works in any industry that relies on patents, copyrights, or trade secrets: their very livelihood depends on the adequate protection of property;
- anyone who invests in those industries—say, for instance, technology, publishing, pharmaceuticals, movies, or television;
- or how about the people who enjoy reading original material, enjoy a good Broadway play or a Saturday afternoon at the movies, or like being able to take medication for illness?
- anyone who cares about owning his own home or car . . . or owning anything else, for that matter . . . should be concerned with the arguments being made to support attacks on intellectual property.

Intellectual property—a creative work, developed in the mind of someone or a group of people, and registered with the government for sale or use by the owner, inventor, or creator—has been repeatedly attacked in the digital age. But its legal protection has a long history.

Some of the first laws enacted by the first Congress (in 1790) are the foundation of current copyright laws. The Constitution authorizes protection of intellectual property as a way to "promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

The reasoning was more pragmatic than ideological. The Founders understood protection provides the incentive for companies and individuals to continue creating and inventing, and to invest in commercializing the invention.

ACCESSORIES TO A CRIME

Some interesting notions have cropped up around the discussion of Napster. Some say "something this cool should be legal"; others contend simply that a person should be allowed to do whatever he can. These half-baked, libertine rationalizations are wrong.

Perhaps the most disingenuous argument is that Napster represents a way to "sock it to" the recording companies that take advantage of consumers and steal from artists. This might be called the "Napster as righter of social wrongs" approach. Society already has a term for these actions, though: aiding and abetting a crime.

Imagine for a moment that physical property—say, your house—were treated the same way. Visitors to your town, on a family vacation, could save on expenses if only they barge into your living room, hunker down on the sofa, flip the channels on your television, and plunder the leftover food from the fridge. Even better, such an approach may even help those who are otherwise homeless. That is pretty cool and it could be done. So why not?

The reason why not is because we in the United States value property—real or intellectual. We understand that owners of original notions must be able to profit from their ideas. Without this ability, our advances in medicine and technology would come to a screeching halt. Prosperity itself would be in peril.

Make no mistake: One reason the United States leads the world in technology, pharmaceuticals, and entertainment is that we have a system of laws that protect our right—a Constitutionally given right—to own property, whether physical or intellectual.

Owners of original notions must be able to profit from their ideas. Without this ability, our advances in medicine and technology would come to a screeching halt.

Should new recording artists have the advantage of being able to distribute their work via the Internet for free? Absolutely. Should individuals be able to trade music that has been provided without a claim of copyright protection? Yes again.

What should not be allowed, or even tolerated, is theft. And taking copyright-protected material and distributing it broadly to individuals who do not pay for the use is theft.

If we do not value property, companies and individuals will cease innovating. If they can no longer make money from their ventures, book publishers, movie producers, and recording artists will stop producing entertainment.

Some Napster advocates think they are pulling a fast one: getting mountains of popular music for free. In fact, they just haven't calculated the real cost to them, to the country, and to our future.

The bottom line: Understand and act in your true interests. Protect intellectual property so you can benefit from greater wealth, health, and entertainment.

FOR MORE INFORMATION...

Life, Liberty, Property. Property rights are essential not only for prosperity, but for political freedom. (*Commentary*, March 1999, 5pp.)

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Welfare

Robert Rector

Robert Rector is a policy analyst at The Heritage Foundation.

Welfare Expenditures by Ethnic Group

At present, over 70 means-tested aid programs provide cash, food, housing, medical care, social services, and training to lower income persons in the United States. Among the largest programs are Temporary Assistance to Needy Families, the Earned Income Tax Credit, Medicaid, Food Stamps, and child nutrition programs.

Total means-tested welfare expenditures by federal and state governments amounted to roughly $384 billion in 1998. Of that sum, $212 billion—55 percent—went to white recipients. Some $105 billion—28 percent—went to black recipients, and $69 billion—17 percent—went to Hispanic recipients.

Aid to black and Hispanic welfare recipients is greater in proportion to the size of their populations than is aid to white recipients. This can be seen by determining the average welfare expenditure per person for each ethnic group.

As a group, the 207 million white residents in the U.S. population receive $212 billion in welfare benefits. As a group, then, they receive some $1,022 per person in welfare aid.

There are some 30 million Hispanic residents in the U.S., and Hispanics as a group receive $69 billion in welfare, or around $2,210 per person. As a group, the 33 million black residents in the U.S. receive some $105 billion in welfare aid, or roughly $3,230 per person.

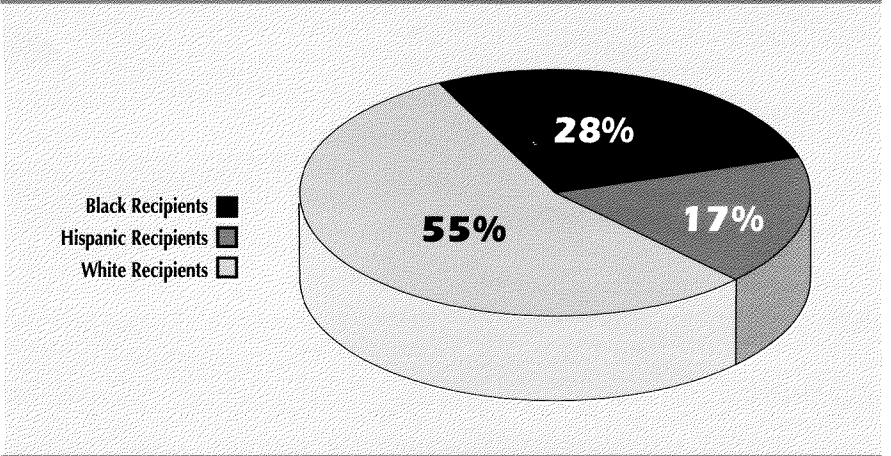
These figures represent the hypothetical amount each individual would receive if total welfare spending for each ethnic group were spread evenly among *all* members of that group. Consequently, the figures should not be interpreted to represent the aid actually received by persons on welfare—those numbers would be far higher.

In addition, the per-capita figures should not be interpreted to mean the typical black or Hispanic welfare recipient receives higher welfare benefits than the typical white recipient. In fact, welfare aid per *recipient* would tend to be similar across all three ethnic groups.

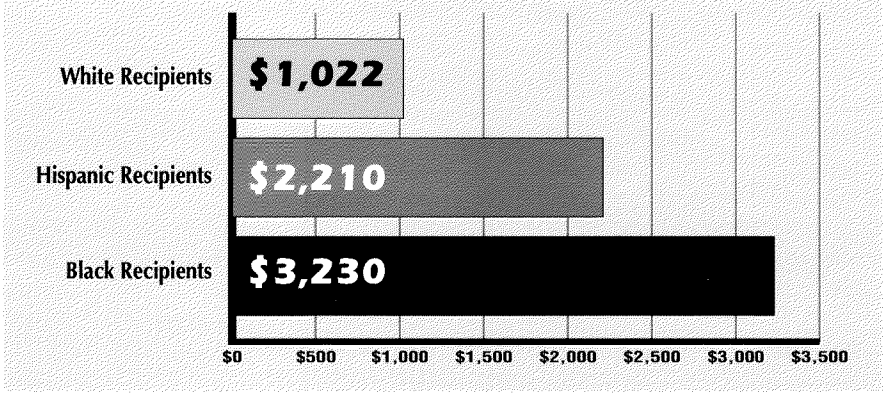
The per-capita welfare spending figures are higher for black recipients because the percentage of the total black population that receives welfare is greater than the percentage of the white population that receives welfare. The same is true for Hispanic recipients.

The higher rates of welfare receipt among blacks and Hispanics are largely the result of the erosion of marriage among those groups. In 1998, 69.1 percent of black children were born outside of wedlock. Among Hispanics the number was 41.6 percent, while among non-Hispanic whites the number was 21.9 percent.

Share of Welfare Spending by Ethnic Group



Welfare Amount Per-Capita



For More Information...

From Welfare to Work. Mayors should look at the lessons of Wisconsin when thinking about how welfare in their city should be run. (Manhattan Institute; "The Entrepreneurial City," 2000, 12pp.)

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Judging How Justices Are Chosen

By Lawrence W. Reed

Some legal observers contend it's time to change the way Michigan Supreme Court justices are selected. Is this a wise idea? Let's look at the current process and its results.

Candidates for the court are nominated by political parties at summer conventions, after which they officially run and appear on the ballot as "nonpartisan." When a vacancy occurs because of death or resignation, the governor appoints a replacement, who must face voters in the next general election.

Surveying just a handful of states reveals no uniform number of justices or a standard method of selection that would appear to have decisive advantages over the others. Michigan's court has seven justices; West Virginia, Tennessee, and Indiana are among the states that have only five on their highest court; the supreme court of Texas, like its federal counterpart, has nine.

Surveying just a handful of states reveals no uniform number of justices or a standard method of selection that would appear to have decisive advantages over all the others.

At least one state, Tennessee, requires its high court to meet in multiple locations. Some states, but not all, require state senate confirmation of gubernatorial nominations to their supreme court. In some states, justices run as partisans from the very beginning; in others, they are nonpartisan throughout the process. Michigan's partisan/nonpartisan hybrid is somewhat unusual, but there is little evidence to suggest it has produced inferior justices.

In Maryland, members of the state's highest court are initially appointed by the governor and confirmed by the state senate. After that, they run for office on their records, unopposed. If voters reject a judge's retention in office, the office becomes vacant and must be filled by a new appointee. The process may look nonpartisan because no political party officially nominates a justice, and competing court candidates don't go head-to-head in noisy elections, but governors almost always choose men and women who share their personal and political philosophies.

While the process of partisan nomination followed by nonpartisan campaigning may appear contradictory, "problems" with it are overblown. A party endorsement does not dictate how a justice may rule in any future case; rather, it is reflective of the fact that a jurist's track record and philosophy are generally compatible with a particular party's broad perspective. Requiring candidates to run on a party line in November may be more consistent, but it might also prompt too many voters to make their decisions based on party labels rather than the qualities and performance of the candidates. If voters have to dig a little bit to learn who's running and why, that's probably a healthy thing.

Proposals to make Michigan Supreme Court slots purely appointive—as they are at the federal level, subject to Senate confirmation for life terms—would do away with the messy electoral process altogether. But that reform would not necessarily guarantee high-quality, squeaky-clean justices immune to either cash or politics.

Moreover, periodically putting incumbents and wannabes before the voters gives citizens the opportunity to rectify appointive mistakes. Even though most voters spend appallingly little time learning much about who is on the ballot, Michigan citizens don't want to give up their right to vote on who serves on their highest court.

A few observers have occasionally argued that some form of "merit selection" is missing from Michigan's Supreme Court. They usually advocate that the governor name justices only from a preapproved list, which almost always means a list approved by the State Bar or some committee thereof. Supposedly, this would assure that we get the best and most qualified . . . but the legal community is not some angelic and dispassionate group of altruists. It is made up of its own elite and factions, each with its own agenda. Governors have some incentive to choose good people for spots on the court and if they fail, at least the voters under the current system can rectify their mistakes.

If the present system unduly politicizes the Court or forces candidates to compromise their integrity by grubbing for campaign money, one small reform could ameliorate that. It would be drawn from the so-called "Missouri system" and would require that justices go before the voters in retention elections when their terms are up. By voting "yes" or "no" voters would decide whether to retain or remove a justice, but wouldn't choose between competing candidates on the ballot.

Fundamentally, however, the current process has not failed Michigan citizens. Rather, it has produced what is arguably the best state supreme court in the nation: a body of eminently qualified, experienced, and sensible jurists, the majority of whom believe in interpreting law, not manufacturing it from the bench. Let's be careful we don't "fix" what appears not to be broken.

❖

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If You Build It, Will They Ride?

The Potential of Rail Transit in Ohio's Major Cities

Sam Staley, Ph.D. and James A. Damask

In October 2000, The Buckeye Institute for Public Policy Solutions will release "If You Build It, Will They Ride? The Potential of Rail Transit in Ohio's Major Cities." Copies of the 34-page report may be obtained from The Buckeye Institute for Public Policy Solutions at 4100 North High Street #200, Columbus, OH 43214. Call 614/262-1593 or visit its Web site at www.buckeyeinstitute.org.

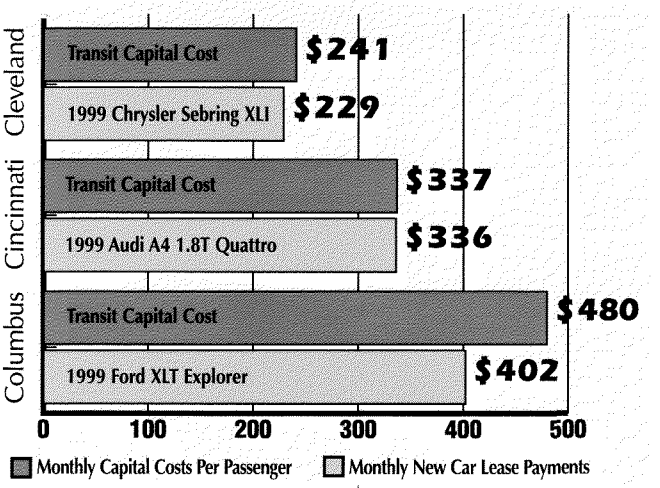
Is taxpayer-financed rail transit a worthwhile investment? If rail is built, will Ohioans even ride it? Can market solutions address transit concerns? These are the questions facing policymakers in many of Ohio's cities.

Rail projects are underway across the state, particularly in Columbus, Cleveland, and Cincinnati. These projects are eligible for millions of dollars of federal funds and potentially *billions* in local and state funds.

Columbus' transit authority proposed a sales tax increase to pay for a transit strategy that relies heavily on a new commuter rail system. Cleveland is considering an extension of its existing rail system, and Cincinnati is developing an ambitious regional strategy that includes over 100 miles of rail corridors.

Public transit in general, however, is losing ground relative to the automobile in Ohio's largest metropolitan areas. Between 1980 and 1996, per-capita ridership declined 40.4 percent in Cincinnati, 48.4 percent in Cleveland, and 24.7 percent in Columbus.

Monthly Costs of Rail Projects Per Passenger Compared to Leased Automobiles



THE COST OF RAIL TRANSIT

Often, rail transit is pitched as a cost-effective alternative to automobile and bus transit. COTA, the transit authority in Columbus, claims the average consumer spends $4,552 per year on his car. By comparison, riding an express bus (round trip) each day of the year would cost a paltry $1,095.

But COTA's estimates suffer from several defects and are highly misleading. First and foremost, the reported public transit costs per ride ignore capital costs, which are largely subsidized by the federal government. If those costs were included, annual costs would jump to $8,325 per ride annually.

It would be cheaper to lease new cars for rail passengers in Columbus, Cleveland, and Cincinnati than to build expensive rail systems. In Cleveland, the Regional Transit Authority could have leased each passenger a 1999 Chrysler Sebring LXi; doing so would have been less expensive than construction of the Waterfront Line. In Cincinnati, the transit authority could lease each potential rail passenger a 1999 Audi A4 Quattro . . .

It would be cheaper to lease new cars for rail passengers in Columbus, Cleveland, and Cincinnati than to build expensive rail systems.

payers over $3.5 million each year.

With respect to operating (as opposed to capital) costs, new cars cost about 10.9 cents per mile per year. Operating costs for mass transit, by contrast, are nearly six times as expensive in Cleveland (63.7 cents) and Columbus (66.5 cents), and four times as expensive in Cincinnati (39.9 cents).

Thus, if cost effectiveness were the primary criteria, leasing or buying cars for each rider would be a more cost-effective alternative than subsidizing rail.

Public transit, and rail transit in particular, is incapable of covering its costs through fares and increased ridership. None of the major urban-transit systems in Ohio generates more than one-third of its revenues from fares.

POPULATION DENSITY AND RIDERSHIP

Population density is falling in Ohio's major cities. This fact is important, because large concentrations of people are necessary to generate passengers for rail transit. In Cleveland, population density reached its peak in 1950 at 12,197 people per square mile. In 1998, population density had fallen to 6,439 per square mile, a 47.2 percent decline. Population densities also peaked in 1950 for Columbus and Cincinnati; by 1998 they had fallen by 63.2 percent in Columbus and 35.1 percent in Cincinnati.

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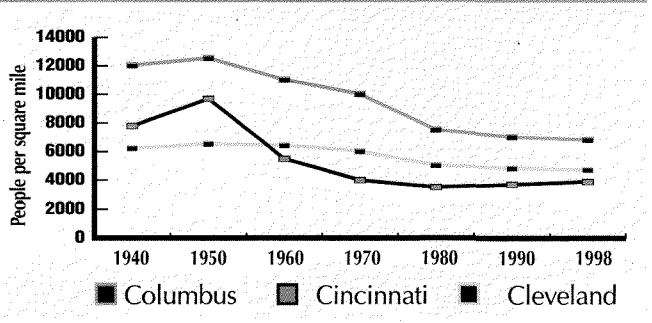
Population Densities: 1940 to 1998



MANAGING CONGESTION AND POLLUTION

Disregarding rail's inability to pay for itself, many rail advocates cite its potential to reduce congestion and improve air quality. But many of the factors that prevent rail transit systems from breaking even financially also limit their effectiveness as ways to reduce congestion and improve air quality.

The form of the city has been changing. As people have become more dispersed, the ability of fixed-route transit systems to improve personal mobility has declined significantly. As a result, people continue to use their cars, and actual rail ridership always falls short of forecasts. Transportation plans that ignore the fundamental role of the automobile as the preferred transportation mode will have little effect on either congestion or pollution.

One of the more important problems faced by transit authorities in Ohio is the relatively low level of use. Public transit captures 2 percent or less of the travel market in Cincinnati, Cleveland, and Columbus. As a practical matter, then, public transit is unlikely to have a major effect on travel patterns. In Cincinnati and northern Kentucky, it is estimated that a 43-mile light-rail transit line would reduce freeway travel by just 1 percent during peak periods.

Transportation plans that ignore the fundamental role of the automobile as the preferred transportation mode will have little effect on either congestion or pollution.

Since the vast majority of Ohioans use automobiles, congestion management requires effective management of automobile traffic volumes. None of Ohio's urban freeways has reached its maximum capacity, according to the Federal Highway Administration.

Solving the congestion problem depends less on building new highway capacity than spreading existing traffic over a longer period of time through congestion pricing: using tolls or other user fees to give drivers an incentive to use freeways at different times. In Arizona, the state transportation department estimated congestion pricing could reduce Phoenix's congestion by 10 percent.

Completing planned freeway projects could reduce congestion by another 8 percent, the department said, while light rail and extended public transit could together reduce congestion by 1 percent.

Regarding pollution, the population densities necessary to sustain a viable rail transit system are more likely to *increase* air pollution. Congestion pricing and completing highway projects, by contrast, remove more tons of pollution, at a lower cost, than transit strategies.

THE FUTURE OF RAIL TRANSIT IN OHIO

Any transportation management strategy that emphasizes rail in Ohio suffers from four significant weaknesses:

1. Transit ridership in Ohio is stable or falling. Monthly ridership on Cleveland's new Waterfront Line, for example, has fallen 42.8 percent since its opening in 1998. Such a decline is consistent with national trends.

2. Congestion, to the extent it is a problem, is best addressed through road-based transportation strategies. Rail represents an exceedingly small share of all trips taken in Ohio. Rail systems have not been able to mitigate congestion in the past, and they are unlikely to do so in the future.

3. Car travel is subsidized at a lower rate than public transit, especially rail. While subsidies for rail and other forms of public transit routinely exceed two-thirds of operating costs, those who travel by automobile pay between 66 and 90 percent of their costs.

4. Ohio's cities and metropolitan areas are evolving, becoming less dense and more geographically fragmented—not more dense and compact, as is needed for successful rail systems.

Market-based transportation strategies offer more promising alternatives for travel and pollution problems:

- *Use Road Systems Strategies.* Completing existing projects would relieve traffic congestion. For instance, completion of Columbus' lengthy repairs to the State Route 315 corridor will make it able to accommodate traffic currently diverted to other roads. Rail projects absorb resources that would otherwise go to important road projects.

- *Deregulate Transit.* This strategy would allow curb rights for competing private companies to run van and other transportation strategies on city streets. Deregulating the taxicab market by removing arbitrary caps on the number of taxis and licenses, as well as removing minimum cab company sizes, would allow these entrepreneurs to serve the transportation needs of more potential customers.

- *Deregulate Land Use.* By allowing for market-driven population densities, communities would enhance the potential for public and privately owned mass transit to operate productively.

- *Expect Telecommuting to Help.* Advances in telecommunications are decreasing the demand for transit of any kind. Telecommuting—by which employees use telephones, faxes, e-mail, and Internet access to work at home—grew to 11 million full-time employees by 1997, removing about 50 billion passenger miles annually from roadways. All of mass transit, including buses and rail systems, transports commuters with 40.1 billion passenger miles annually.

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Abolish the Liquor Control Commission? *We'll Drink to That!*

by Angela Eckhardt and Kurt T. Weber

When national Prohibition ended in 1933, the regulation of alcohol was left to individual states. Oregon and 17 others opted to establish state-operated distilled spirits distribution systems. The underlying rationale for putting government in control of liquor distribution was to exclude Prohibition-era bootleggers from the distilled spirits market.

Simple observation shows we no longer need worry about bootleggers. For this reason and more, the continued existence of the Oregon Liquor Control Commission, and its counterparts nationwide, should be questioned.

INTRODUCTION TO THE OLCC

The Oregon Liquor Control Commission, or OLCC, is the only liquor distributor in Oregon: It is a government-created, -operated, and -protected monopoly. So if monopolies are illegal—let alone bad for consumers—why does the state of Oregon run one?

In theory, each liquor store in Oregon is privately owned and operated. But reality falls far short of theory. Liquor store owners, or "contract agents" as they're legally called, are essentially public employees—except in name. While they shoulder all the responsibilities and liabilities of being a private business owner, they enjoy few if any of the advantages that being in the private sector offers.

The OLCC dictates virtually every aspect of how contract agents run liquor stores. The OLCC mandates that contract agents work in their stores full time, and they cannot be absent for more than three days without written notification to the OLCC. Agents cannot change their hours of operation without OLCC approval. They cannot change their store's location, exterior signage, or interior design without approval. They're legally prohibited from making product recommendations to, or quality evaluations for, customers.

While it would make sense for liquor stores to sell items such as snack foods, the OLCC prohibits liquor stores from selling anything unless it is on the official "related items" list. Ironically, bars, taverns, and restaurants are required by law to have food available during hours of operation when alcohol is being served, but liquor stores are prohibited from having food available when selling liquor.

How about putting a bottle of Baileys Irish Cream, Old Grand Dad, or Frangelico on sale? You can't, unless the OLCC itself strikes a deal with the liquor companies and passes the savings along to the contract agents. But what incentive is there for the state agency to do so? None whatsoever.

OLCC has no incentive to act in the interest of consumers, because no one is legally allowed to compete against it. Because it is a monopoly, the OLCC can't help but fail in one of its stated goals: to "make alcohol available to legal users through quality customer service."

Another goal of the OLCC is to "provide optimal revenue" from the sale of alcohol. According to a February 28, 1997 *Portland Business Journal* article, the OLCC ships liquor to "store operators at a 106 percent markup." By comparison, the average profit store operators earned on sales was 8.2 percent. We should be thankful the OLCC doesn't regulate and sell milk, or we'd be pouring Mountain Dew on our breakfast cereal.

State-Run Wholesale Distribution of Spirits

Alabama
Idaho
Iowa
Maine
Michigan
Mississippi
Montana
New Hampshire
North Carolina
Ohio
Oregon
Pennsylvania
Utah
Vermont
Virginia
Washington
West Virginia
Wyoming

LIQUOR DISCRIMINATION

Interestingly, the OLCC maintains a dramatically different approach to the regulation and taxation of beer and wine. Unlike distilled spirits, beer and wine are sold in outlets that are privately owned in theory and in fact. Beyond this favoritism, the OLCC further discriminates against distilled spirits when it comes to taxation.

A 1994 report published by Cascade Policy Institute noted beer was taxed in Oregon at approximately $3.35 per pure alcohol gallon. The tax rate on liquor exceeded $28 per pure alcohol gallon—a rate 836 percent higher than beer! That disparity remains today. We know the alcohol in beer and wine is the same as that in liquor, so why the discrimination?

END THE RELIC

If the OLCC monopoly were abolished, and the sale and distribution of distilled spirits privatized, liquor prices would be lower and customer service would improve. Moreover, many Oregonians would take pride in the fact that their state government was not trafficking in alcohol and thereby profiting (as much) from vice.

National alcohol Prohibition ended in 1933. That same year, a special session of the Oregon Legislature created the Oregon Liquor Control Commission. Whatever justification fostered its creation, we no longer need this relic of Prohibition. Oregonians should write the final chapter on Prohibition and privatize the sale and distribution of distilled spirits.

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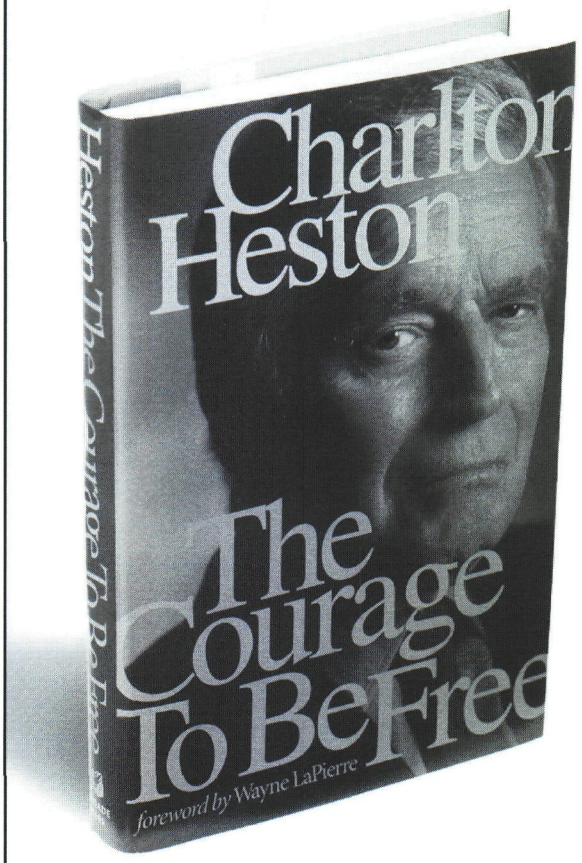

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